Supreme Court, U.S.
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No. 00-97

IN THE
Supreme Court of the United States

LOIS E. ADAMS, *ET AL.*,

Appellants,

v.

WILLIAM JEFFERSON CLINTON, *ET AL.*

Appellees

On Appeal from
The United States District Court
for the District of Columbia

ADAMS' OPPOSITION TO APPELLEES HOUSE OFFICERS' MOTION TO AFFIRM

George S. LaRoche,
Counsel of Record
1 Valley View Avenue
Takoma Park, MD 20912
301-891-3857

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Appellees Jeff Trandahl and Wilson Livingood in their official capacities as Clerk and Sergeant at Arms of the United States House of Representatives ("House Officers") file a *Motion to Affirm* ("HOMA")[1]. The Motion is wholly devoted to an assertion that Appellants lack(ed) standing to prosecute their claim against these parties as defendants.[2]

APPELLANTS HAVE STANDING

Appellants must be able to satisfy the following elements to demonstrate that they have standing:

> First, the[y] . . . must have suffered an "injury in fact"–an invasion of a legally protected interest . . . . Second, there must be a causal connection between the injury and the conduct complained of–the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . .th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-60 (1992).

1: Appellants Are Injured, Though Their Injury and the Relief They Seek Are Not as Stated by Appellees

The House Officers' bluntly admit that they ignore the claims actually made by the Plaintiffs/Appellants in this case and replace those claims with claims of their own: "we–like the Court below–have assumed throughout this proceeding . . . that appellants' inability to vote for Representatives is their injury and that this inability constitutes 'injury in fact' for Article III purposes" (HOMA 9-10).[3] The House Officers'

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[1] Page numbers for the House Officers' Motion are for the type-written version, since counsel hasn't received the printed version.

[2] Appellees seem also to argue a cross-appeal from the opinion of the court below, complaining it "side-stepped" their "standing arguments" and "implicitly applied . . . the 'doctrine of hypothetical jurisdiction' which this Court [has] rejected" (HOMA 8, 10 n.6).

[3] Appellees also suggest that they are "at a loss to know what

attribution is wholly unfounded. The House Officers (as well as Appellee Clinton) elide *Adams*' strict equal protection claim, discussing instead a theory of direct infringement of fundamental rights, which was/is at issue in the case formerly consolidated with *Adams*, *Alexander v. Daley, on appeal sub nom Alexander v. Mineta*, No. 99-2062. Appellees' strategy avoids answering *Adams* (*see* JS 14-19) and suppression of *Adams*' actual claims, arguments, and evidence amounts to denial of due process of law, *ergo* Appellants' second, provisional question on appeal (*see* JS i, 19, 30).[4]

Adams' "injury in fact," *Lujan, supra*, 504 U.S. at 560-61, (relevant to the issue presented to this Court on appeal) is denial of the equal protection of the laws, reflected in their exclusion from apportionments of congressional districts while all other, similarly-situated people are included (JS i).[5] It's basic, hornbook law that there are several, broadly defined categories of equal protection claims. *See* Laurence H. Tribe, *American Constitutional Law*, 1436-1672 (2d ed., 1988). One category, for instance (which *isn't* at issue in

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[*Adams*' injury] is" (HOMA 10 n.5). Since this follows quoting two of *Adams* previous rebuttals of the Appellees' attempts to rewrite the claims in this law suit and quoting one of *Adams*' previous reiterations of the *actual* claim, the statement is disingenuous.

[4] The House Officers also refer to a claim or challenge concerning their "failure to perform duties" for elected Representatives (HOMA 18-20 & n.16), but Appellants cannot understand this discussion at all. *Adams* makes no claim against anyone for a "failure to perform duties" for elected Representatives. The parts of the *Complaint* Appellees seem to cite with reference to this strange discussion serve only one purpose (elementary in complaints generally): to record the simple fact that there are no representatives from the District of Columbia in the House. This point is a necessary factual predicate to *Adams*' comparison of treatment of the residents of the District to residents of all other places where Congress has or has had identical plenary powers.

[5] Another claims raised below aren't before this Court, for reasons which aren't germane to the merits of the issue(s) which *are* before the Court. Appellees House Officers discussion of those claims (like Appellee Clinton's discussion of them) is irrelevant.

Adams), is denial of equal protection to a racial or other "protected" minority. *See Id.* at 1451-54. Another category involves discrimination which "distribute[s] benefits or burdens in a manner inconsistent with [or infringing other] fundamental rights[,]" *Id.* at 1454, 1463-65, although those "fundamental rights" are not themselves directly at issue in the case. *Adams* is soundly in this category: the claim is for denial of equal protection, though the denial entails infringement of other fundamental rights (which are not direct causes of action in themselves, but which means the case is subject to strict scrutiny, *see, e.g., Kramer v. Union School Dist.*, 395 U.S. 621, 627-30 & n.10 (1969); Tribe, *supra*, §§ 16-6, 16-7). Thus, *Adams* has shown cognizable injury (JS 9-11, 21-28, Apps. F & G).

2: The House Officers Participate in the Cause of Appellants' Injuries

The House Officers seem to contend that "apportionment" starts and *stops* with the President's act of calculating pursuant to 2 U.S.C. §2a(a) (HOMA 11-12), but there is no authority for this proposition. *Franklin v. Massachusetts* established that "it is the President's personal transmittal of the report to Congress that settles the apportionment[,]" 505 U.S. 788, 799 (1992), but this statement (which *rebuts* an argument that the census data provided to the President by the Secretary of Commerce "foreordain[ed]" the apportionment) means that, for the purposes of challenges to an apportionment, the President stands as the *first* agent in a line of accountability, but not necessarily the last, especially if the question at issue is how to examine and restrain or stop an apportionment which is unconstitutional, for any reason.

Like the President, the House Officers are intrinsic and important agents designated by Congress to carry out the apportionment process (*see* JS 21-25). *Com. of Mass. v. Mosbacher*, 785 F.Supp. 230, 248-49 (D.Mass.), *rev'd on other grounds sub nom Franklin v. Mass.*, 505 U.S. 788 (1992) (detailed history and explanation of current apportionment procedure); *Federation for Am. Imm. Reform v. Klutznick*, 486

F.Supp. 564, 566 (D.D.C.), *app. dismissed*, 447 U.S. 916 (1980). In the fact, the Clerk's primary role is defined *in connection with* the President's, in 2 U.S.C. § 2a(b), immediately after definition of the President's role in subsection 2a(a).

Appellee Trandahl carries out those portions of the apportionment process which are official communication of the numerical allocation of seats to each State and enrollment of the elected Representatives for seating in Congress. 2 U.S.C. § 2a(b); Rules III(1) & III(5) of the Rules of the House of Representatives; JS App. F. ¶¶ 9-10. Appellee Livingood is responsible for admitting only those Representatives apportioned to each State (and no others) to the sessions of Congress. Rule IV(4) of the Rules of the House of Representatives; JS App. F. ¶ 11. Thus, the House Officers play key roles in the apportionment process defined by Congress, which results in each apportionment of congressional districts (even though they exercise no ministerial judgment or discretion to alter the calculations made by the President). *See Franklin, supra*, 505 U.S. at 796-99. They are "in the chain" of the apportionment process.

The gist of the causation element is "a causal connection" between the injury and a defendant's actions; in other words, "the injury has to be fairly traceable to the challenged action of the defendant[s]." *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)), *quoted in Lujan, supra*, 504 U.S. at 559-60. The injury complained of in *Adams* is the apportionment itself, which the House Officers enforce, enact, or carry out, though the unconstitutionality of the apportionment "is traceable to [an] unconstitutional classification," *Jacobs v. Barr*, 959 F.2d 313, 317 (D.C. Cir.), *cert. denied*, 506 U.S. 831 (1992), which was made by Congress antecedent to the particular present apportionment. *See* JS App. F.¶¶ 78, 84, 87, 105-106, 117-118. Thus, insofar as the present *mal*apportionment–the present apportionment which *excludes* District residents from apportionments of any representation in the House of Representatives–is enforced, in part, by the House Officers, *Adams'* injuries are "fairly traceable," *Simon, supra*, 426 U.S. at 41-42, to the actions of

the House Officers. They are in the chain of causation of Appellant's injuries. *Public Citizen v. Lockheed Aircraft Corp.*. 565 F.2d 708, 717 n.31 (D.C. Cir. 1977).

"But for" the actions of Appellees House Officers and Appellee Clinton, *see Warth v. Seldin*, 422 U.S. 490, 504 (1975), there would be no actual apportionment, which is the locus of Appellants' injury presented in this case on appeal (JS i and App. F. ¶¶ 30, 68, 105, 106). Congress could have carried out its policy of discriminating against residents of the District while conferring benefits on residents of the federal enclaves (for instance) and, though that treatment results in the same injury (denial of due process) in other contexts or loci,[6] there would be no injury in the context of apportionments of congressional districts *if* Appellees did not execute, enforce, or carry into effect apportionments also reflecting the disparate treatment. These facts make Appellees proper defendants in a suit to address an unconstitutional apportionment.

3: The Court Can Redress the Injury by Declarations and Injunctions Against the House Officers

The House Officers' arguments against redressability hang entirely on their mischaracterization of the relief Appellants demand. But since *Adams* demands restraint of apportionments which reflect or are based on disparate treatment of similarly-situated populations, the equal protection injury at issue in this case on appeal can be redressed by an injunction against Appellees that such apportionments not be reported, fulfilled, or carried out.

For the purposes of standing, the question of redressability need not be answered with absolute finality. In this regard, it might be remembered that, "a plaintiff is entitled to any relief appropriate to the facts alleged in the bill and supported

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[6] A major alternative category or context of injury was presented in the *Complaint* and remanded to a District Court of one judge by the Three-judge District Court (JS App. A 4-6), so it is not before the Court on appeal.

by the evidence, even where [the plaintiff] has not prayed for such relief." *Dann v. Studebaker-Packard Corp.*, 288 F.2d 201, 216 (6th Cir. 1961), *quoted in Adams v. Bell*, 711 F.2d 161, 203 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984) (other citations omitted); Fed. R. Civ. P. 54(c). Thus, the requirement can be fulfilled with a showing that a favorable decision is merely "*likely* to redress" the injury complained of, *Natural Resources Defense Council, Inc. v. Jamison*, 787 F.Supp. 231, 234-35 (D.D.C. 1990) (citing *National Wildlife Federation v. Hodel*, 839 F.2d 694, 705 (D.C. Cir. 1988), or that a plaintiff "personally would benefit in a tangible way from the court's intervention," *Warth, supra*, 422 U.S. at 509.

In a case such as *Adams*, which presents a claim of denial of equal protection of the laws, the ambiguity of possible relief presents no impediment to remedying the situation.

> [W]e have frequently entertained attacks on discriminatory . . . practices even when the government could deprive a successful plaintiff of any . . . relief by withdrawing . . . benefits from both the favored and the excluded class. . . . Accordingly, as Justice Brandeis explained, when the "right invoked is that to equal treatment," the appropriate remedy is a *mandate* of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class. Consistent with Justice Brandeis' explanation of the appropriate relief for a denial of equal treatment, we have often recognized that the victims of a discriminatory government program may be remedied by an end to preferential treatment for others.

Heckler v. Mathews, 465 U.S. 728, 740 & n.8 (1984) (quoting *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239, 247 (1931); other citations omitted). In short, the injury caused by unequal treatment may be redressed by terminating the indicia and/or expressions of the unequal treatment. This fact that the injury might be remedied either by *extension* of benefits to the previously deprived class or *withdrawal* of benefits from the previously favored class does not defeat

standing, *see Orr v. Orr*, 440 U.S. 268, 272 (1979), especially since such a result would insulate all underinclusive statutes or patterns of governmental action from review, *see id.* and *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 227 (1987). At the very least, it's worth noting that mere termination of unconstitutionally disparate treatment should be enough to satisfy the redressability element of standing, since constitutional rights are worth vindication in their own right. *See Orr, supra*, 440 U.S. at 273.[7]

Such an order barring an action which violates a constitutional right–regardless whether the actor *intended* to violate the right or even had discretion to not act–would be "of immense benefit" to the person whose constitutional right was being violated by the act. *Bland v. Fessler*, 88 F.3d 729, 738 (9th Cir. 1996), *cert. denied*, 519 U.S. 1009 (1996). It is enough, when a party is challenging some act or policy of the government which stands between the party and the status or condition the party might wish to achieve, that the relief the party seeks would simply *deactivate or nullify* that act or policy. Such nullification might come from a declaration that the act or policy is unconstitutional. *See Miller v. Christopher*, 96 F.3d 1467, 1470 (D.C. Cir. 1996), (specific principle of standing) *aff'd sub nom Miller v. Albright*, 523 U.S. 420, 432-33 (1998). Thus, even declaratory relief can satisfy the "redressability" element of standing. *See Mobil Oil Corp v. Attorney General of the Commonwealth of Virginia*, 940 F.2d 73, 75 (4th Cir. 1991);[8] *Bland, supra*, 88 F.3d at 737.

In this case, Appellants complain that they are the subjects of unconstitutionally discriminatory action. Exclusion of Appellants from apportionment violates their rights to equal

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[7] "We do not deny standing simply because the 'appellant, although prevailing here on the federal constitutional issue, may or may not ultimately win [his] lawsuit.'" (quoting *Stanton v. Stanton*, 421 U.S. 7, 18 (1975)).

[8] "Public policy should encourage a person aggrieved by laws he considers unconstitutional to seek a declaratory judgment against the arm of the state entrusted with the state's enforcement power[.]"

treatment under the law. Appellants are among those who are completely excluded from apportionment of representation in Congress (JS App. F. ¶¶ 30, 68, 80, 105, 114), so they are themselves objects of the unconstitutional action at issue in the case and there is little question that a judgment *preventing* the action will redress it. *See Lujan, supra*, 504 U.S. at 561-62. And the suggestion that the House Officers are merely acting "under orders" or following statutes and Rules doesn't mean their actions enforcing unconstitutional apportionments cannot be restrained.[9]

As to such violations, it is well-established that "the appropriate remedy is a *mandate* of equal treatment, a result [which] can be accomplished by *withdrawal* of benefits from the favored class .... [Thus, this] discriminatory government program may be remedied by an end to preferential treatment for others." *Mathews, supra*, 465 U.S. at 740 & 740 n.8. Appellants demand both declaratory judgments and injunctions against the House Officers as remedies for their injuries, and these remedies (or such other relief as the court finds appropriate, *see Dann, supra*, 288 F.2d at 216; Fed. R. Civ. P. 54(c)) would nullify or terminate the differential treatment expressed or reified in apportionment of congressional districts. Such nullification would arise directly, as a legal principle, from a declaration that the actions or policies are unconstitutional, *see Miller, supra*, 96 F.3d at 1470; *Mobil Oil, supra*, 940 F.2d at 75, and the injunctions demanded would effect the same ends directly and forcefully by terminating the disparity of treatment (at least insofar as the Constitution itself allows and without violating its otherwise on-going demands, *see Adams' Opposition to Appellee Clinton's Motion to Dismiss or Affirm* at 1-2).

An order barring enforcement of unconstitutional exclusions from apportionments, such as the injunction

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[9] It should give one pause, when an agent of any government declares that s/he is immune from any legal or judicial restraint because s/he is acting under orders of that government, which is the gist of the House Officers' argument that Appellants lack standing.

demanded would, therefore, be "of immense benefit" to Appellants, precisely because they are the subjects of the unconstitutional actions complained of in the case. *Bland, supra*, 88 F.3d at 738. In fact, *anything* the court might do to restrain violations of the rights of Appellants would be a personal and tangible benefit to them. *Warth, supra*, 422 U.S. at 509, 95 S.Ct. at 2210. Since the injury caused by the unequal treatment suffered by Appellants may "be redressed by a favorable decision," they have standing to prosecute their case. *Mathews, supra*, 465 U.S. at 740. In sum, *Adams* Appellants standing may be summarized by paraphrasing the Court's opinion in *Baker v. Carr*, concluding plaintiffs *there* had standing:

> These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly situated. Their constitutional claim is, in substance, that [Congress' treatment of them] constitutes arbitrary and capricious state action, offensive to the [equal protection provisions of the Constitution] in its irrational disregard of the standard of apportionment prescribed [in the United States] Constitution or of any standard, effecting a [total exclusion] of representation to [a] voting population. The injury which [*Adams*] asserts is that this classification disfavors the voters in [the District of Columbia], placing them in a position of constitutionally unjustifiable inequality *vis-à-vis* voters in irrationally favored [areas]. . . . They are entitled to a hearing and to the District Court's decision on their claims.

369 U.S. 186, 207-08 (1962).

CONCLUSION

For the reasons stated above, the House Officers' Motion to Affirm should be denied and jurisdiction of this case noted.

Respectfully submitted,
George S. LaRoche,
Adams' Counsel of Record